

prove his case, which it is not necessary to file with the plaint itself, a list of them must be annexed. (Section 59.)

Bulky documents, like account books, are produced in Court, and a copy of the necessary entries or pages filed with the plaint. The Court will compare the copy with the original, and having marked the documents or the entries for "identification" will return them. (Section 62.)

It is necessary to attend to this, because though documents the necessity of which as evidence only appears in consequence of something which comes out in the course of the trial, can be produced when necessity arises, documents which form the *foundation of the claim*, if not produced at first, can only be produced afterwards by the permission of the Court. (Section 63.)

SECTION IV.—THE FIRST STEPS IN A SUIT.

§ 9.—*Summons to Defendant.*

The plaint being filed and registered by the Court, the next thing is to obtain the attendance of the defendant or his agent, as before stated.

The summons is to be accompanied by a copy of the plaint, or a concise statement of the case if the plaint is lengthy (section 58) one for each defendant.

The summons may require the *personal* attendance of the defendant, but *not*, if he resides beyond the local limits of the Court's ordinary original jurisdiction, at a distance of 50 miles from the Court (or 200 miles by rail, supposing railway communication to exist for five-sixths of the distance). (Section 67.)

Every summons must specify whether on appearance, the suit will be heard to *final disposal*, or merely for a preliminary hearing, with the object of settling the issues, or determining the preliminary points on which the parties differ, and on which the judgment will be in the end given.

Petty suits that can *prima facie* be disposed of at once will be for "final hearing" as is the invariable practice in all Small Cause Court cases. (Section 68.)

When a summons is for "final hearing" it will direct the defendant to *produce his witnesses*, so that he must be prepared to bring them, or apply for summons beforehand.

In all cases the summons directs the defendant to produce any documents on which *he* relies for his defence, or any document mentioned which the plaintiff requires him to produce as being in his possession or power.

§ 10.—*Service of the Summons.*

This is effected by tendering the copy and the copy of plaint. It is served on the person unless there be an agent, or on the manager or agent of a branch business when the principal office is elsewhere. (Section 76). If this fails, service is made on any adult male member of the defendant's family who is residing with him ; but not on a *servant*. (Section 78.)

The recipient is required to sign the original summons on receiving the copy. If this is *refused* or if there is no agent or no member of the family, the copy of the summons is affixed to the outer door of the house. On the original is endorsed the manner, time, &c., of service. If the Court thinks the defendant is keeping out of the way to avoid service, then a copy is affixed at the Court-house, and another on the house where the defendant is known to have last resided, and this "substituted" service, as it is called, is legally effectual. (Section 83.)

For further details as to service of summons from the "Mufassal" inside Presidency towns, for service on a prisoner in jail, for service by post, or in foreign territory where there is a Resident or Political Agent, and where a summons may be served on persons of rank in *form of a letter*, and the cost of postage, &c., I shall leave the student to consult sections 85-95 as occasion requires.

Court fees for service are always payable in the form of adhesive stamps, whether by Government or any private party, under the Court Fees Act. I shall give a *note* on the Court Fees Act at the end of this chapter.

§ 11.—*Appearance of Parties—Consequence of Non-appearance.*

If the plaintiff has been in fault by not paying the fees, and the summons has not been served, and so the defendant does not appear, the suit *may* be dismissed^o. (Section 96; see also section 99.)

If neither party appear, the suit *shall* be dismissed unless it is especially ordered, for reasons to be recorded by the Judge himself, otherwise. (Section 98.)

If the defendant does not appear, and the plaintiff does, and it is proved that the summons was served, the Court may proceed *ex parte*; but if service is not proved the Court *shall* issue a second summons (and *may* if there is any sort of doubt); and if service is proved, but it appears there is not sufficient time for him to appear, the hearing *shall* be postponed. If the plaintiff cannot find the defendant, see section 99A.

When a case is heard *ex parte*, there is a special procedure by which the defendant may appear, show cause for his absence, and get the *ex parte* order set aside, and the case gone on with on the merits. (Sections 108-9.) A Judge is not bound to decree a case *ex parte* without being satisfied that the claim is true, as far as he can judge without hearing the defence.

If the defendant appears and the plaintiff does not, the suit will be dismissed unless the defendant admits the claim wholly or partly, when a decree will be given accordingly. The plaintiff may, however, appear and show cause, and get this order set aside. (Sections 102-3.)

In the case of several plaintiffs or several defendants and some of them appearing, see sections 105-6.

§ 12.—*Written Statements and Set-off.*

Supposing the parties to be before the Court, *written statements* may be put in *at or before the first hearing*, and not otherwise, unless in some cases it is permitted by the Court under section 111.

But, there will be power to file a new suit, and under certain conditions to obtain an order of re-admitting his original suit. (Section 99.)

Written statements must be signed and verified like complaints. They must not be *prolix, argumentative* or contain *irrelevant* matter, and must be in clear numbered paragraphs. (See sections 114-6.).

A "set-off" is where the defendant has some claim which he is allowed to plead and prove as something that either completely or partly counterbalances the plaintiff's claim against him.

The details of the law of set-off cannot be here given, and in any necessary case legal advice must be obtained. A number of illustrations are, however, given in section 111. .

§ 13.—*Examination of the Party.*

After this the *examination of the parties* by the Court proceeds, unless the case is admitted. The Court examines, but the parties may suggest questions. In case the pleader (being present and not his principal) cannot answer, section 120 explains what is to be done.

§ 14.—*Production of Documents.*

I have already alluded to the rule which requires the plaintiff to file with his plaint, and the defendant to bring, consequent on his summons, the documents which *directly* form the *basis* of the claim or the defence; and it is further the duty of the parties to give notice to produce or bring with them on their own side, all documents that are likely to be wanted for the trial at any stage: and section 138 requires this to be done at or before the first hearing. No documentary evidence which could have been so got ready will be afterwards received without special reason and permission given. The details of all such production, and of notice by one party to produce, will be found in sections 129-36 of the Code.

Records of other cases may be always sent for by the Court. (Section 37.)

The Court may impound and require to keep in custody any document under section 143. This is usually done where there is some fraud or suspected falsity, or when the Stamp law is evaded, &c.

The *return* of documents when done with, is provided for by section 144, but *no document* can be claimed back which by *force of the decree* has become *void or useless*.

§. 15.—*Settlement of Issues.*

Where the suit is not of the simple character which admits of its being disposed of at once, the parties appear to *settle the issues*, that is to enable the Judge to put down in his record of the case, the points of *law*, or of *fact* (separately), on which the parties after full questioning appear really to be in dispute about: the careful performance of this duty is not only essential, but is particularly difficult with native suitors, who rarely disclose the real case till it comes out by patient questioning.

The parties may (section 150) agree on issues and submit a list of them to be decided by the Court.

In *other* cases the Court may always, at any time before decree, amend the issues or add others, or strike out wrong ones. (Section 149.)

§ 16.—*Adjournments.*

There is no limit to *adjournments* beyond what the permission of the Courts, based on considerations of convenience and justice, require. Either party may apply for, and on cause shown may get, an adjournment by permission of the Court, which may impose such terms as to *costs* as it thinks right. (Section 156).

§ 17.—*Attendance of Witnesses.*

Directly a summons for defendant is out, the machinery of the law has been fairly set in motion and an application for a summons to a witness may at once be made. With the application the necessary sum for expenses of travelling to and from the Court, and for maintenance for one day there, must be deposited. This sum must be offered to the witness at time of serving the summons on him⁷. (Sections 160-1.)

⁷ As to insufficiency of the sum, and further expenses for detention of witness beyond one day at Court, see section 162.

Summons are served on witnesses just as they are on defendants. Reasonable time must always be given to the witness *to prepare and to travel* to Court. (Section 167). If a witness absents or keeps out of the way, the remedy is, after formal legal examination of the process served on oath (or affirmation) as to the fact of service, to issue a *proclamation* (section 168), and this if unsuccessful may be followed by an *attachment* of property of all kinds not exceeding the value of costs and of a fine imposable (not exceeding Rs. 500) under Section 170.

If the witness appears and gives good cause for non-appearance, the attachment may be withdrawn. (Section 169.) If he does not appear he may be condemned (*in contumaciam*), and if he does appear but fails to show cause, he may also be condemned to a fine suitable to his condition in life and to all the circumstances of the case, and never exceeding Rs. 500, and if this is not paid the attached property may be sold for its recovery. (Section 170.)

The Court may summon witnesses of its own motion, when, consistently with the law of evidence, it thinks necessary. (Section 171.)

A person who fails to attend as a witness may be *arrested* and brought before the Court, if the Court sees reason to believe that he has no lawful excuse. When so brought up he may be fined for his neglect if he had no lawful excuse for his absence. It is to be remembered that non-tender of the witnesses' *expenses* is a lawful excuse. (Section 174.)

It is also to be remembered that persons residing at a distance from Courts, already specified in the case of defendants, *cannot* be required to attend as *witnesses personally*. They must be examined by *Commission*. (Section 176.)

§ 18.—*Commissions.*

A Commission to examine an absent witness, which I will here dispose of, means simply a written direction addressed to *any* person *within* the local jurisdiction of the Court (section 385), or